



Billing code 3410-02 P

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 920

[Docket No. AMS-FV-13-0071; FV13-920-2 IR]

Kiwifruit Grown in California; Decreased Assessment Rate

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Interim rule with request for comments.

SUMMARY: This rule decreases the assessment rate established for the Kiwifruit Administrative Committee (Committee) for the 2013-14 and subsequent fiscal periods from \$0.035 to \$0.025 per 9-kilo volume-fill container or equivalent of kiwifruit. The Committee locally administers the marketing order, which regulates the handling of kiwifruit grown in California. Assessments upon kiwifruit handlers are used by the Committee to fund reasonable and necessary expenses of the program. The fiscal period began on August 1 and ends July 31. The assessment rate will remain in effect indefinitely unless modified, suspended, or terminated.

DATES: Effective [INSERT DATE 1 DAY AFTER THE DATE OF PUBLICATION IN THE FEDERAL REGISTER]. Comments received by [INSERT DATE 30 DAYS AFTER THE DATE OF PUBLICATION IN THE FEDERAL REGISTER], will be considered prior to issuance of a final rule.

ADDRESSES: Interested persons are invited to submit written comments concerning this rule. Comments must be sent to the Docket Clerk, Marketing Order and Agreement Division, Fruit and Vegetable Program, AMS, USDA, 1400 Independence Avenue SW, STOP 0237, Washington, DC 20250-0237; Fax: (202) 720-8938, or internet: <http://www.regulations.gov>. Comments should reference the document number and the date and page number of this issue of the **Federal Register** and will be available for public inspection in the Office of the Docket Clerk during regular business hours, or can be viewed at: <http://www.regulations.gov>. All comments submitted in response to this rule will be included in the record and will be made available to the public. Please be advised that the identity of the individuals or entities submitting comments will be made public on the internet at the address provided above.

FOR FURTHER INFORMATION CONTACT: Kathie Notoro, Marketing Specialist, or Martin Engeler, Regional Director, California Marketing Field Office, Marketing Order and Agreement Division, Fruit and Vegetable Program, AMS, USDA; Telephone: (559) 487-5901, Fax: (559) 487-5906, or E-mail: Kathie.Notoro@ams.usda.gov, or Martin.Engeler@ams.usda.gov.

Small businesses may request information on complying with this regulation by contacting Jeffrey Smutny, Marketing

Order and Agreement Division, Fruit and Vegetable Program,
AMS, USDA, 1400 Independence Avenue SW, STOP 0237,
Washington, DC 20250-0237; Telephone: (202) 720-2491, Fax:
(202) 720-8938, or E-mail: Jeffrey.Smutny@ams.usda.gov.

SUPPLEMENTARY INFORMATION: This rule is issued under
Marketing Order No. 920, as amended (7 CFR part 920),
regulating the handling of kiwifruit grown in California,
hereinafter referred to as the "order." The order is
effective under the Agricultural Marketing Agreement Act of
1937, as amended (7 U.S.C. 601-674), hereinafter referred to
as the "Act."

The Department of Agriculture (USDA) is issuing this
rule in conformance with Executive Orders 12866 and 13563.

This rule has been reviewed under Executive Order
12988, Civil Justice Reform. Under the marketing order now
in effect, California kiwifruit handlers are subject to
assessments. Funds to administer the order are derived from
such assessments. It is intended that the assessment rate
as issued herein will be applicable to all assessable
kiwifruit beginning on August 1, 2013, and continue until
amended, suspended, or terminated.

The Act provides that administrative proceedings must
be exhausted before parties may file suit in court. Under
section 608c(15)(A) of the Act, any handler subject to an

order may file with USDA a petition stating that the order, any provision of the order, or any obligation imposed in connection with the order is not in accordance with law and request a modification of the order or to be exempted therefrom. Such handler is afforded the opportunity for a hearing on the petition. After the hearing, USDA would rule on the petition. The Act provides that the district court of the United States in any district in which the handler is an inhabitant, or has his or her principal place of business, has jurisdiction to review USDA's ruling on the petition, provided an action is filed not later than 20 days after the date of the entry of the ruling.

This rule decreases the assessment rate established for the Committee for the 2013-14 and subsequent fiscal periods from \$0.035 to \$0.025 per 9-kilo volume-fill container or equivalent of kiwifruit.

The California kiwifruit marketing order provides authority for the Committee, with the approval of USDA, to formulate an annual budget of expenses and collect assessments from handlers to administer the program. The Committee members are producers of California kiwifruit. They are familiar with the Committee's needs and with the costs of goods and services in their local area. Therefore, they are in a position to formulate an appropriate budget

and assessment rate. The assessment rate is formulated and discussed in a public meeting. Thus, all directly affected persons have an opportunity to participate and provide input.

For the 2008-09 and subsequent fiscal periods, the Committee recommended, and USDA approved, an assessment rate that would continue in effect from fiscal period to fiscal period unless modified, suspended, or terminated by USDA upon recommendation and information submitted by the Committee or other information available to USDA.

The Committee met on July 11, 2013, and unanimously recommended 2013-14 expenditures of \$113,550 and an assessment rate of \$0.025 per 9-kilo volume-fill container or equivalent of kiwifruit. In comparison, last year's budgeted expenditures were \$108,075. The assessment rate of \$0.025 per 9-kilo volume-fill container or equivalent is \$0.010 per 9-kilo volume-fill container or equivalent less than the rate currently in effect. This action will provide sufficient revenue to meet the Committee's expenses while maintaining a financial reserve within the maximum amount permitted under the order, which is approximately one fiscal period's expense.

The major expenditures recommended by the Committee for the 2013-14 year include \$76,125 for management expenses,

\$7,500 for a financial audit, \$5,000 for handler audits, and \$10,000 for a contingency fund. Budgeted expenses for these items in 2012-13 were \$72,500 for management expenses, \$7,000 for a financial audit, \$5,000 for handler audits, and \$10,000 for a contingency fund.

The assessment rate recommended by the Committee was derived by considering the amount of revenue needed to meet anticipated expenses, estimated shipments of California kiwifruit, excess funds carried into the 2013-14 crop year, and estimated interest income. Kiwifruit shipments for the year are estimated at 2,600,000 9-kilo volume-fill containers. When applied to the new assessment rate, this should provide \$65,000 in income. Assessment income, combined with interest income and reserve funds, will be sufficient to meet the anticipated expenses of \$113,550. This also should result in a July 2014 ending reserve of \$101,391, which is within the maximum reserve of approximately one fiscal year's expenses permitted by the order (§ 920.42).

The assessment rate established by this rule will continue in effect indefinitely unless modified, suspended, or terminated by USDA upon recommendation and information submitted by the Committee or other available information.

Although this assessment rate is effective for an indefinite period, the Committee will continue to meet prior to or during each fiscal period to recommend a budget of expenses and consider recommendations to modify the assessment rate. The dates and times of Committee meetings are available from the Committee or USDA. Committee meetings are open to the public and interested persons may express their views at these meetings. USDA will evaluate Committee recommendations and other available information to determine whether to modify the assessment rate, and further rulemaking will be undertaken as necessary. The Committee's 2013-14 budget and those for subsequent fiscal periods will be reviewed and, as appropriate, approved by USDA.

Initial Regulatory Flexibility Analysis

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA) (5 U.S.C. 601-612), the Agricultural Marketing Service (AMS) has considered the economic impact of this rule on small entities. Accordingly, AMS has prepared this initial regulatory flexibility analysis.

The purpose of the RFA is to fit regulatory actions to the scale of businesses subject to such actions in order that small businesses will not be unduly or disproportionately burdened. Marketing orders issued pursuant to the Act, and the rules issued thereunder, are

unique in that they are brought about through group action of essentially small entities acting on their own behalf.

There are approximately 178 kiwifruit growers in the production area and approximately 28 handlers subject to regulation under the marketing order. Small agricultural producers are defined by the Small Business Administration (13 CFR 121.201) as those having annual receipts less than \$750,000, and small agricultural service firms are defined as those whose annual receipts are less than \$7,000,000.

The California Agricultural Statistical Service (CASS) reported total California kiwifruit production for the 2011-12 season at 37,700 tons, with an average price of \$775 per ton. Based on the average price and shipment information provided by the CASS and the Committee, it could be concluded that the majority of kiwifruit handlers would be considered small businesses under the SBA definition. Based on kiwifruit production and price information, as well as the total number of California kiwifruit growers, average annual grower revenue is less than \$750,000. Thus, the majority of California kiwifruit producers may also be classified as small entities.

This rule decreases the assessment rate established for the Committee and collected from handlers for the 2013-14 and subsequent fiscal periods from \$0.035 to \$0.025 per

9-kilo volume-fill container or equivalent of kiwifruit. The Committee unanimously recommended 2013-14 expenditures of \$113,550 and an assessment rate of \$0.025 per 9-kilo volume-fill container. The proposed assessment rate of \$0.025 is \$0.010 lower than the 2012-13 rate. The quantity of assessable kiwifruit for the 2013-14 fiscal year is estimated at 2,600,000 9-kilo volume-fill containers. Thus, the \$0.025 rate should provide \$65,000 in assessment income and combined with reserve funds and interest income, should be adequate to meet this year's expenses.

The major expenditures recommended by the Committee for the 2013-14 year include \$76,125 for management expenses, \$7,500 for a financial audit, \$5,000 for handler audits, and \$10,000 for a contingency fund. Budgeted expenses for these items in 2012-13 were \$72,500 for management expenses, \$7,000 for a financial audit, \$5,000 for handler audits, and \$10,000 for a contingency fund.

The Committee unanimously recommended the lower assessment rate. Income generated from this assessment rate, plus reserve funds and interest income, will be sufficient to meet the Committee's anticipated expenses of \$113,550 and should result in a July 2014 ending reserve of \$101,391, which is within the maximum reserve amount of

approximately one fiscal year's expenses permitted by the order (§ 920.42).

Prior to arriving at this budget and assessment rate, the Committee considered alternative expenditure levels, but ultimately decided that the recommended levels were reasonable and necessary to properly administer the order.

A review of historical information and preliminary information pertaining to the upcoming season indicates that the grower price for 2013-14 could range between \$750 and \$850 per ton, or between \$7.42 to \$8.42 per 9-kilo volume-fill container of assessable kiwifruit. Utilizing these estimates and the assessment rate of \$0.025, estimated assessment revenue as a percentage of total producer revenue could range between 0.30 and 0.34 percent for the season.

This action decreases the assessment obligation imposed on handlers. Assessments are applied uniformly on all handlers, and some of the costs may be passed on to producers. However, decreasing the assessment rate reduces the burden on handlers and may reduce the burden on producers. In addition, the Committee's meeting was widely publicized throughout the California kiwifruit industry and all interested persons were invited to attend the meeting and participate in Committee deliberations on all issues. Like all Committee meetings, the July 11, 2013, meeting was

a public meeting and all entities, both large and small, were able to express views on this issue. Finally, interested persons are invited to submit comments on this interim rule, including the regulatory and informational impacts of this action on small businesses.

In accordance with the Paperwork Reduction Act of 1995, (44 U.S.C Chapter 35), the order's information collection requirements have been previously approved by the Office of Management and Budget (OMB) and assigned OMB No. 0581-0189. No changes in those requirements as a result of this action are necessary. Should any changes become necessary, they would be submitted to OMB for approval.

This action imposes no additional reporting or recordkeeping requirements on either small or large California kiwifruit handlers. As with all Federal marketing order programs, reports and forms are periodically reviewed to reduce information requirements and duplication by industry and public sector agencies.

AMS is committed to complying with the E-Government Act, to promote the use of the internet and other information technologies to provide increased opportunities for citizen access to Government information and services, and for other purposes.

USDA has not identified any relevant Federal rules that duplicate, overlap, or conflict with this rule.

A small business guide on complying with fruit, vegetable, and specialty crop marketing agreements and orders may be viewed at:
<http://www.ams.usda.gov/MarketingOrdersSmallBusinessGuide>.
Any questions about the compliance guide should be sent to Jeffrey Smutny at the previously mentioned address in the **FOR FURTHER INFORMATION CONTACT** section.

After consideration of all relevant material presented, including the Committee's information and recommendation, and other available information, it is hereby found that this rule, as hereinafter set forth, will tend to effectuate the declared policy of the Act.

Pursuant to 5 U.S.C. 553, it is also found and determined upon good cause that it is impracticable, unnecessary, and contrary to the public interest to give preliminary notice prior to putting this rule into effect and that good cause exists for not postponing the effective date of this rule until 30 days after publication in the **Federal Register** because: (1) The 2013-14 fiscal year began on August 1, 2013, handlers began shipping kiwifruit in mid-September, and the order requires that the rate of assessment for each fiscal period apply to all assessable

kiwifruit handled during the period; (2) this action decreases the assessment rate for assessable kiwifruit beginning with the 2013-14 fiscal year; (3) handlers are aware of this action, which was unanimously recommended by the Committee at a public meeting and is similar to other assessment rate actions issued in past years; and (4) this interim rule provides a 30-day comment period, and all comments timely received will be considered prior to finalization of this rule.

List of Subjects in 7 CFR Part 920

Kiwifruit, Marketing agreements, Reporting and recordkeeping requirements.

For the reasons set forth in the preamble, 7 CFR part 920 is amended as follows:

PART 920 - KIWIFRUIT GROWN IN CALIFORNIA

1. The authority citation for 7 CFR part 920 continues to read as follows:

Authority: 7 U.S.C. 601-674.

2. Section 920.213 is revised to read as follows:

§ 920.213 Assessment rate.

On and after August 1, 2013, an assessment rate of \$0.025 per 9-kilo volume-fill container or equivalent of kiwifruit is established for kiwifruit grown in California.

Dated: October 17, 2013

Rex A. Barnes
Associate Administrator
Agricultural Marketing Service

[FR Doc. 2013-24892 Filed 10/22/2013 at 8:45 am; Publication
Date: 10/23/2013]